

Independent claim 27 recites an automatically engageable and releasable brake apparatus adaptable to be attached to a *wheelchair*. The brake apparatus comprises a seat actuation member, a brake actuating member in fluid communication with the seat actuation member and defining a closed fluid system therewith, and a brake member in communication with the brake actuating member. The actuation of the seat actuation member activates the brake actuating member which causes the brake member to move from a first position which prevents any significant rearward motion of the *wheelchair* to a second position which allows substantially unrestricted rearward motion of the *wheelchair*.

Independent claim 31 recites a *wheelchair* comprising a frame, a seat member incorporated into and substantially supported by the frame, a wheel assembly having a plurality of first wheels rotatably connected proximate a front end of the frame, and a plurality of second wheels rotatably connected proximate a rear portion of the frame, and an automatically engageable and releasable brake apparatus attached to the rear portion of the frame. The brake apparatus comprises a seat actuation member, a brake actuating member in fluid communication with the seat actuation member and defining a closed fluid system therewith, and a brake member in communication with the brake actuating member. Actuation of the seat actuation member activates the brake actuating member, which causes the brake member to move from a first position and which prevents any significant rearward motion of the *wheelchair* to a second position which allows substantially unrestricted rearward motion of the *wheelchair*.

With respect to the industrial fork lift machinery disclosed in Jones, the PTO asserted that “Jones shows a wheeled chair” (Office Action, page 2, line 13). Applicants respectfully submit, however, that claims 27 and 31 each recite a *wheelchair*, not a “wheeled chair.” Even

a lay person understands that the industrial truck shown in Fig. 1 of Jones is a fork lift, not a *wheelchair*, as claimed.

The commonly understood definition for the term *wheelchair* is a movable chair for use by invalids or those who cannot walk (see the common definitions for *wheelchair* attached hereto in Appendix A). On the other hand, it is also commonly understood that industrial material moving equipment, like the fork lift according to Jones, is not in any way the same as a *wheelchair* (common definitions for a fork lift are attached hereto in Appendix B).

The fact remains that claim 27 recites a brake apparatus that is attached to a *wheelchair*, and claim 31 recites a *wheelchair*, including particular structural features thereof. In each case, the recitation of the *wheelchair* in the preamble not only limits the structure of the claimed invention, but is clearly necessary to give life and meaning to each claim in the context of each claim as a whole (see MPEP, section 2111.02, second paragraph). As such, the use of the term *wheelchair* in the preamble must be given patentable consideration with respect to the overall context of the claims. A fork lift simply is not a *wheelchair*.

Moreover, one skilled in the art, or even a lay person seeking to modify a *wheelchair* for invalids to enhance the safety and protection of patients who rely on the *wheelchair*, would not have had any logical reason to use a hydraulic brake system that is otherwise designed for and implemented in heavy equipment for industrial and construction use. To the contrary, Applicants respectfully submit that one skilled in the art would have seen that a general hydraulic brake system for an industrial machine would not possibly be in any way suitable for a manually propelled *wheelchair*. That would not even be a plausible option, especially in view of the complex nature (and thus the associated substantial expense) of the encased hydraulic system described in Jones.